

October 18, 2011

## **ACQUISITION ALERT 12-01**

### **Use of Subject to Availability of Funds Authority**

#### **A. Background**

FAR Subpart 32.7 authorizes the contracting officer to initiate a contract action properly chargeable to funds of the new fiscal year before those funds are available, provided that certain specified conditions are met. Clauses 52.232-18 and 52.232-19 are prescribed for use when those conditions apply.

The anticipated extended duration of Continuing Resolutions in FY12 will require NOAA acquisition professionals to initiate some contracting actions in advance of appropriations in order to effectively process the FY12 workload and to ensure that essential NOAA services are in place when required. NOAA Contracting Officers must ensure that they are citing the Availability of Funds Clauses only when the conditions prescribed for use of the clauses are met.

#### **B. Purpose**

This Acquisition Alert is being transmitted to all NOAA Heads of Contracting Offices (HCOs) for dissemination within their respective Acquisition Divisions. The purpose of this Acquisition Alert is to clarify the proper actions and authorities to use during periods where a Continuing Resolution applies.

#### **C. Proper Use of Availability of Funds Clauses**

The Contracting Officer shall incorporate the following FAR Part 32 clauses in solicitations and contracts only when the stated conditions are met:

a. **FAR 52.232-18, Availability of Funds:** This authority may be used only for operation and maintenance and continuing services (e.g., rentals, utilities, and supply items not financed by stock funds)—

(1) Necessary for normal operations; and

(2) For which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

b. **FAR 52.232-19, Availability of Funds for the Next Fiscal Year:** This authority may be used only for a one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations and extends beyond the fiscal year in which it begins; provided, that—

(1) Any specified minimum quantities are certain to be ordered in the initial fiscal year (see FAR 37.106) and

(2) The contract includes the clause at FAR 52.232-19.

**D. Initiation of Contracting Actions Without Funding Under a Continuing Resolution:**

During periods of an extended Continuing Resolution, it may be necessary for Contracting Officers to initiate contracting actions in advance of appropriations in order to ensure that essential NOAA services are in place when required and/or to effectively process the FY12 workload. The NOAA Senior Bureau Procurement Official has authorized the Heads of Contracting Office (HCO) to initiate such actions at their discretion upon receipt of a \$0 purchase requisition from the requiring office.

While it is allowable to accept a \$0 purchase requisition for these actions, it is preferable for the requiring office to provide some funding on the purchase requisition to evidence their need for the commodity or service and their intent to provide full funding as soon as the appropriation is passed. As soon as NOAA's appropriation is passed, the requiring office shall provide the balance of any funds required to meet the Government estimate to the Contracting Officer.

In these instances, neither FAR 52.232-18 nor FAR 52.232-19 shall be cited in the solicitation unless the conditions stated for their use in FAR Part 32 apply to the procurement. Should neither of the clauses apply, it is recommended that a prominent statement be included in the solicitation informing prospective offerors that funds are not available.

Once the appropriation has been passed, HCOs shall not accept \$0 purchase requisitions to initiate any contracting actions to be funded with the then-current year funding.

**E. Initiation of Contracting Actions Without Funding Under a Full Appropriation**

It may be appropriate and necessary to initiate contracting action in a fiscal year for large dollar procurements to be awarded in the following fiscal year where conditions for use of the FAR Subject to Availability of Funds clauses do not apply (e.g., acquisition of satellites and major systems). In those instances, the HCOs likewise have the discretion to accept a \$0 purchase requisition to initiate the contracting actions in advance of appropriations. The FAR clauses shall not be cited for these actions.

**F. Point of Contact**

Questions concerning this Acquisition Alert should be directed to Jerry Rorstrom-Lee at [Jerry.Rorstrom-Lee@noaa.gov](mailto:Jerry.Rorstrom-Lee@noaa.gov) or by telephone at 301-713-0820 ext. 119.